



# *LIQUOR CONTROL DIVISION*

## *Frequently Asked Questions*

### *Liquor Representatives*

#### **Displays**

Q. Can a Montana Liquor Representative use items, for example; BBQ's, TV's, bicycles, snowboards, in liquor displays they set up at Agency liquor stores or licensed establishments and at the end of the promotion give the agent the item or raffle it off to customers that register for the raffle?

A. No. The furnishing, giving, renting, lending, or selling of a thing of value (e.g., bicycle, snowboard) to the retailer, by any wholesaler, importer or domestic producer, is an act of inducement. It is immaterial whether or not there is raffle or whether the retailer can win the raffle. If the retailer wants to have something in the display/raffle (e.g., bicycle, snowboard, BBQ, TV) then the retailer needs to provide it and not the industry member.

According to Title 27 of the Code of Federal Regulations (CFR), regulation number 6.83, product displays are "any wine racks, bins, barrels, casks, shelving, and the like from which distilled spirits, wine, or malt beverages are displayed and sold." The key words in this definition are "from which." All of the examples given are items on which products either rest or are stacked on. Each of these items possesses the capability of storing or containing products. Therefore, the fact that an item has the capability to hold or contain distilled spirits, wine or malt beverages is the major determining factor to allow an item as a "product display."

The Alcohol and Tobacco Tax and Trade Bureau (TTB) of the United States Department of the Treasury has held that BBQs, TV's, bicycles, and the like do not fall within the definition/meaning of product displays. Therefore, the act by an industry member of furnishing a BBQ, TV, bicycle, canoe, etc. would be considered a means to induce within the intent of the FAA Act and is prohibited.

Q. Can a Montana Liquor Representative place items, for example; BBQ's, TV's, bicycles, snowboards, in Agency liquor stores or licensed establishments if they are not used as part of a display?

A. No. This would be considered lending within the meaning of Title 27 Code of Federal Regulations (CFR), regulation number 6.21(c). It is unlawful for any industry member to induce, directly or indirectly, any retailer to purchase product from the industry member to the exclusion, in whole or in part, of such products sold or offered for sale by other persons in interstate or foreign commerce by any furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services or other things of value.

Q. Under what circumstances will the United States Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB) issue a violation in regards to industry members providing items such as BBQ's, TV's, bicycles, snowboards to a retailer or placing such items in a retail establishment?

A. The TTB may issue a violation if there is, in whole or in part, inclusion, inducement, and/or interstate foreign commerce.

Q. Where can I read more information about the TTB regulations?

A. The following links may give industry members, retailers, and other interested parties a better understanding of TTB policy views on this subject.

[http://www.ttb.gov/trade\\_practices/ttb-g-2011-3-tied-house-guidance.pdf](http://www.ttb.gov/trade_practices/ttb-g-2011-3-tied-house-guidance.pdf)

[http://www.ttb.gov/industry\\_circulars/archives/2012/12-01.html](http://www.ttb.gov/industry_circulars/archives/2012/12-01.html)

Q. What should I do if I see practices that seem questionable and may be in violation of the federal codes?

A. You should advise the company you work for and they can report the activity to the TTB. Following is their contact information:

TTB Western II District Field Office  
40 Washington Avenue PMB#201  
Bremerton, WA 98337  
513-684-2491

## **Advertising**

Q. Can a Montana Liquor Representative pay for advertising such as radio ads, posters or billboards for an on-premise licensee or an Agency Liquor store?

A. No. It is unlawful for any industry member to induce, directly or indirectly, by paying for advertising for a licensee or an Agency liquor store. This creates an undisclosed ownership interest in the business and the industry member is assuming liability of the retailer.

## **Offerings**

Q. Can a Montana Liquor Representative give a distilled spirit product to an Agency liquor store or an on-premises licensee for raffling purposes?

A. No. Montana Liquor Representative may not make any gift contribution to any person having ownership interest in an Agency liquor store or to an employee of the agent or an on premises licensee.

Q. Can a Montana Liquor Representative give on-premises licensees money to encourage them to carry their products?

A. No. An industry member may not induce a retailer to carry their line of products. It is unlawful for any industry member to induce, directly or indirectly, any retailer to purchase any products from the industry member to the exclusion, in whole or in part, of such products sold or offered for sale. An industry member may not give money to a retailer or other things of value to a retailer as this constitutes inducement.

Q. Can a Montana Liquor Representative give, rent or sell a retailer a refrigerated serving dispenser for distilled spirits?

A. A refrigerated serving dispenser is considered equipment and may be sold to a retailer. It must be sold at a price not less than the cost to the industry member whom initially purchased the equipment. Payment must be collected within 30 days of the date of the sale. The dispenser may not be given or rented to a retailer.

Q. Can a Montana Liquor Representative provide the product to fill a refrigerated serving dispenser at a licensed establishment?

A. No. The product in the dispenser must be purchased by the licensee from an Agency liquor store.

Q. Can a Montana Liquor Representative contribute to an Agency liquor store owner, money for shelving space, display space or to encourage them to carry their products?

A. No. The renting of display space by an industry member at a retail establishment constitutes an interest in the retailers' property. Product displays may be conditioned upon the purchase of the products advertised on the display in a quantity necessary for the initial completion of the display. No other condition can be imposed by the industry member on the retailer in order for the retailer to receive or obtain the product display. An industry member may not induce a retailer to carry their line of products. It is unlawful for any industry member to induce, directly or indirectly, any retailer to purchase any products from the industry member to the exclusion, in whole or in part, of such products sold or offered for sale.

Reimbursements to retailers for setting up product or other displays constitutes paying the retailer for rendering a display service and is prohibited.

Q. Can a Montana Liquor Representative purchase drinks for customers at a bar?

A. Yes. However, a Montana Liquor Representative may not purchase drinks "for the house", which means all patrons of the establishment, to induce the purchase of particular brands.

Q. Is there a maximum dollar amount a Montana Liquor Representative can spend at an on-premises account purchasing drinks?

A. No.

Q. Can a Montana Liquor Representative give an Agency liquor store owner or an all-beverage licensee napkin caddies, condiment trays, shirts, hats, and similar promotional products?

A. Yes. Representatives are allowed to give or sell point of sale advertising material and/or consumer advertising specialties to a retailer (Agency liquor store) as permitted in Title 27 of the Code of Federal Regulations (CFR), regulation number 6.84.

Point of Sale advertising materials are items designed to be used within a retail establishment to attract customer attention to the products of the industry member. Such materials include, but are not limited to: posters, inside signs, trays, coasters, mats, napkins, back bar mats, thermometers, clocks, calendars, and alcoholic beverage lists or menus.

Consumer advertising specialties are items that are designed to be carried away by the consumer. Such materials include, but are not limited to: nonalcoholic mixers, bottle or can openers, cork screws, printed recipes, pamphlets, pencils, shirts and caps.

Q. Can an agent of an Agency liquor store or their employees distribute bar napkin caddies, condiment trays, shirts, hats, or similar promotional products if they receive them from a Montana Liquor Representative?

A. No. An Agency liquor store owner and their employees are not registered to promote products. Consumer advertising specialties need be given to licensees by a registered Montana Liquor Representative. An Agency liquor store owner or their employees may not receive consumer advertising specialties or point of sale materials from a Montana Liquor Representative for the purpose of giving them to licensees to induce the licensee to purchase their liquor orders from them.

Q. Can a Montana Liquor Representative conduct surveys of Agency liquor stores?

A. Yes. Agency liquor stores are operated by individual agents; therefore, their participation in a survey is up to their discretion.

Q. Can a Montana Liquor Representative provide mailings regarding their products to Agency liquor stores?

A. Yes. Although this department is not allowed to provide mailing addresses for the purpose of soliciting. Addresses for Agency liquor stores listed in the quarterly Montana Liquor Price Book are the physical address of the store, and in many cases, is not the mailing address.

Q. What are the guidelines used to determine if a liquor product is allowed to be sold in the state of Montana?

A. All products must be approved by the department prior to being accepted into the state liquor warehouse and subsequently sold to agency liquor stores. A picture of the product must be sent to the department in order to determine if it meets the department's inventory policy as referenced in the Administrative Rules of Montana (ARM42.11.402).

Products must be marketed in a responsible and appropriate manner. The department, in its discretion will not approve a liquor product that targets persons under the age of 21 or encourages irresponsible consumption of alcohol.

The department will not approve products which blur the distinction between an alcoholic and nonalcoholic product by utilizing labeling and/or primary packaging that emphasize features that are most commonly associated with nonalcoholic consumable products. Some examples of packaging that would not be allowed would include, but are not limited to: alcohol in gelatin cups, aerosol cans, mason jars that contain fruit or hollow candies.

Products with flavors designed to target and appeal to underage persons such as bubble gum or cotton candy would also not be considered for distribution.

Additionally, if the product's marketing technique contains elements designed to target or particularly appeal to underage persons, disguises that the product contains alcohol or alludes to or suggests irresponsible, excessive or underage consumption it too, will not be allowed to be sold in the state of Montana.

The department will not approve products requiring specialized handling such as frozen or refrigerated products.

Q. How do Montana Liquor Representatives know if approval of a product is granted?

A. Approval or disapproval is communicated to the Montana Liquor Representative by a liquor distribution specialist via phone or email.

Q. Can a Montana Liquor Representative have distilled products shipped directly to them from their supplier?

A. No. All products must be shipped to the liquor warehouse and then shipped to an Agency liquor store. A Montana Liquor Representative must purchase their products from the Agency liquor store.

## **Samples**

Q. How does a Montana Liquor Representative obtain samples of the products they represent?

A. All sample products must be shipped to the liquor warehouse. The Montana Liquor Representative must submit a request on a "Sample Request" form provided by the department by visiting <http://www.revenue.mt.gov> or calling (406)444-4003. The form must be submitted to the department at least seven days prior to the requested ship date. The samples are shipped to an Agency liquor store. The Montana Liquor Representative must purchase the sample at an Agency liquor store for the posted price of \$12.00 per case.

Q. Does a Montana Liquor Representative need to maintain records documenting the use of samples?

A. Yes. A Montana Liquor Representative must maintain a permanent sample log which contains a listing of all sample purchases, the name and location of each recipient, and the date the sample was received. The department may request to examine these records.

Q. Who can a Montana Liquor Representative give samples to?

A. Samples may only be given to licensed-all beverage retailers and Agency liquor store agents. Samples may not be given to a licensed all-beverage retailer or an agency liquor store that has purchased the brand within the last 12 months. A Montana Liquor Representative may not give more than three liters of a particular brand label of a distilled spirit product or fortified wine as samples to an all-beverage licensee or an Agency liquor store owner within the last 12 months.

Q. What size can samples be?

A. Samples are limited to bottles containing no more than 750 ml. If a vendor does not produce a product in a size of 750 ml or less, the next largest size may be substituted for 750 ml.

Q. Is there a limit to the amount of samples a Montana Liquor Representative is allowed?

A. Yes. The limit is 72 bottles of 750 ml per brand label, per vendor, per calendar year, in addition to 720 bottles of 50ml or 200 ml.

Q. Where can the consumption of samples occur?

A. On-premises consumption of samples must take place at a licensed all-beverage establishment or at a special event conducted under a catering endorsement by an all-beverage licensee. In addition, Agency liquor store agents are allowed to accept samples, given to them at their place of business by a Montana Liquor Representative, but must be consumed on private property. Consumption of samples may not occur on the premise of an Agency liquor store.

## **Tastings**

### **Q. What is a tasting event?**

A. A tasting event is a public event where consumers are allowed to sample products. These events may be at an all-beverage licensed premise or at an event catered by an all-beverage licensee that has a catering endorsement. These events may take place as an everyday activity or within a bar, tavern, etc. as long as they are properly licensed.

Regardless of the instance, the licensee must acquire the product through the normal distribution process:

- Purchase the product at posted price from an Agency liquor store, or
- Receive the product as samples from a registered representative. As long as it is limited to 3 liters of a brand label and the licensee hasn't purchased the brand within 12 months.

### **Q. What are vendors allowed to do in regards to participating in tastings?**

A. An employee of the distillery (Vendor) can:

- Set-up a booth or table at a licensed premises.
- Pour drinks to patrons/customers as allowed by the licensee.
- Purchase the product, although not for more than the ordinary retail price from the licensee.

The vendor can only pour drinks to patrons. Soliciting sales, disseminating product information and contributing to the growth of the product is considered "promoting". This is the responsibility of the registered Montana Liquor Representatives. A vendor can only do this at an event, as long as they are accompanied by a local representative.

### **Q. What are Montana Liquor Representatives allowed to do in regards to participating in tastings?**

A. A Montana Liquor Representative can participate by:

- Setting up a booth or table.
- Educate patrons/ customers on the product.
- Purchase the product from the licensee, although not for more than the ordinary retail price.



Administrative rule (42.11.243) states; a registered representative can only give samples to a licensed all-beverage retailer or an Agency liquor store agent who has not purchased the brand within the last 12 months. Samples cannot be given to the public. Therefore, a registered representative cannot pour drinks at such a tasting as the public would be involved.

The registered Montana Liquor Representative can be present to promote the product. These events may include: trade shows or product promotional events.

### **General Questions**

Q. Can a Montana Liquor Representative ensure there is inventory at the state warehouse when they are promoting new products to licensees and Agency liquor stores?

A. Yes. A Montana Liquor Representative can fill out a “Promotional Product Request Form” detailing their promotional strategy, the stores they plan to target and the number cases requested. The form is available at <http://www.revenue.mt.gov> and then submitted to the department. Upon approval, a Montana Liquor Representative will be able to maintain product in the bailment warehouse for six months. If the product fails to sell at the proposed level, the department will make arrangements to remove the excess stock from the warehouse at the vendor’s expense. No additional promotions will be allowed until excess product is removed from the warehouse.

Q. Can a Montana Liquor Representative promote and build displays for products they are not registered for?

A. No. Industry members may, at a retail establishment, stock, rotate and affix the price to products which they sell, provided products of other industry members are not altered or disturbed. The rearranging or resetting of all or part of a store is not allowable. An industry member may provide a recommended shelf plan or shelf schematic.

Q. Can an industry member have a billboard and approach the Agency liquor stores in the vicinity of the billboards to inquire if they would be interested in adding their store name and location to the billboard? It would indicate the product(s) advertised on the billboard are available at the indicated locations.

A. Yes. Listing the names and addresses of two or more unaffiliated retailers selling product(s) from an industry member by utilizing an advertisement does not constitute a means to induce, as stated in Title 27 of the Code of Federal Regulations, regulation number 6.98, provided:

- The advertisement does not also contain the retail price of the product (except where the exclusive retailer in the jurisdiction is a State or a political subdivision of a State), and



- The listing is the only reference to the retailers in the advertisement and is relatively inconspicuous in relation to the advertisement as a whole, and
- The advertisement does not refer only to one retailer or only to retail establishments controlled directly or indirectly by the same retailer, except here the retailer is an agency of a State or a political subdivision of a State.

Q. Can a Montana Liquor Representative hire a promotional lady/gentleman for example; (Jagermeister lady/ gentleman, Pendleton lady/gentleman, Black Velvet lady/gentleman, Jack Daniels lady/gentleman) to promote their products at a bar, the fair, or a convention?

A. Yes. A promotional individual that is working at a convention may be paid by the Montana Liquor Representative. However, a promotional individual that is working at an all-beverage licensed establishment or at an event catered by an all-beverage licensee must be paid by the licensee.

Q. What is the minimum age that a promotional lady/gentleman must be (Jagermeister lady/gentleman, Pendleton lady/gentleman, Black Velvet lady/gentleman, Jack Daniels lady/gentleman)?

A. A person must be a minimum of 18 years of age to serve alcoholic beverages in the state of Montana. A person must be a minimum of 21 years of age to consume alcoholic beverages in the state of Montana.

Q. Are coupons offering rebates on the purchase of liquor allowable in Montana?

A. Yes. There are two types of coupons and both are acceptable.

- Mail-in rebate coupon: A Mail in rebate coupon is when the customer mails in the coupon along with the required documents and the rebate is mailed directly to the customer. Mail-in rebate coupons are legal in Montana.
- Instant rebate coupon: An Instant rebate coupon is when the retailer gives the customer the amount of the coupon off the product at the time of the sale. Instant rebate coupons are legal in Montana as long as it doesn't result in the amount paid by the customer falling below the state's posted price. It is against the law for an agent to sell product for less than the state's posted price. Agency liquor stores are allowed to mark-up their retail price to whatever they want to the general public. If the company you represent wants to offer an instant rebate coupon you would need to check with each store to find out what their mark-up is so that the coupon does not take the price paid by the customer below the posted price. Suggested statement on coupons indicates, for example; "\$2.00 off or not below the state's posted price". Additionally, instant rebate coupons are not preferable to most agents; therefore, they refuse to accept them.

Q. Can a Montana Liquor Representative ask an Agency liquor store or a licensee to exclusively sell their line of products?

A. Yes. A Montana Liquor Representative may request an Agency liquor store or a licensee to carry the products they represent. It is unlawful for an industry member to offer an inducement along with the request. The brand of products sold by the store agent or a licensee is ultimately the decision of the store agent or the licensee.

Q. Can a Montana Liquor Representative place an order with the Liquor Control Division, Liquor Distribution Bureau for a product to be shipped to an Agency liquor store?

A. No. A Montana Liquor Representative may not place an order for a product to be shipped to an Agency liquor store. All order requests must be received from the Agency liquor store for products they wish to receive in their store.